



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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Denver, CO 80203

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Jared Polis, Governor

Dan Gibbs, DNR Executive Director

Lauren Ris, CWCB Director

TO: Colorado Water Conservation Board Members

FROM: Lisa Bright-Unger, Water Resources Specialist
Stream and Lake Protection Section

DATE: March 19-20, 2025

AGENDA ITEM: Agenda 6b. Proposed 2-Year Water Use Agreement with
Garfield County to Lease Ruedi Reservoir Water for
Instream Flow Use on the 15-Mile Reach - Water Division 5
(1st Meeting)

Introduction:

Beginning in 2020, the CWCB entered into a Water Use Agreement (“Agreement”) with Garfield County to use up to 400 AF of water stored in Ruedi Reservoir (“Ruedi Water”) for instream flow (“ISF”) use in the 15-Mile Reach of the Colorado River. The annual Water Use Agreement was subsequently renewed in 2021 and 2022. In 2023 a two-year lease agreement was signed for the use of up to 350 AF/year. Today we are requesting the Board’s consideration for a similar two-year Water Use Agreement.

A Location Map of the area is attached as Exhibit A. The executed Water Use Agreement between Garfield County and the CWCB from 2023 is attached as Exhibit B.

Staff Recommendation:

No formal action is required at this time.



Pursuant to 37-92-102(3) C.R.S. and ISF Rule 6b., the Board will use a two-Board meeting process to review, consider public comment, and approve or reject a proposed two-year Water Use Agreement that would allow for releases of water from Ruedi Reservoir for instream flow use on the 15-Mile Reach of the Colorado River. The Board's consideration of the proposed Agreement at this meeting will initiate this process and begin a twenty-day period in which any person may request the Board to hold a hearing on the proposal. The initial presentation of this proposal provides an opportunity for the Board and the public to identify questions or concerns that Staff will address at this or a subsequent meeting.

Background:

The purpose of this lease is to supplement existing ISF water rights to preserve and improve the natural environment within the 15-Mile Reach, specifically to benefit critical fish habitat and to help meet flow targets identified by the U.S. Fish and Wildlife Service ("USFWS") in support of the Upper Colorado River Endangered Fish Recovery Program. The 15-Mile Reach is critical habitat for four federally protected native fish species - the Colorado pikeminnow, razorback sucker, humpback chub and bonytail.

The increased flows from the Ruedi Reservoir releases provide benefit to the critical fish habitat and extend the period in which USFWS flow targets could be met. The releases can also provide additional flexibility to operators of other west slope reservoirs that also typically release water in late summer to benefit the 15-Mile Reach.

Discussion:

ISF Rules 6e. and 6f. describe the Board's evaluation process, including specific factors that the Board shall consider in determining the appropriateness of an



acquisition. Additional information that the Board may use to evaluate the proposed Water Use Agreements is included below:

Water Proposed for Leased Acquisition and Location of Use:

The water proposed for lease to CWCB under the Agreement includes up to 350 acre-feet owned by Garfield County (“Leased Water”). The proposed Leased Water is stored in Ruedi Reservoir pursuant to Garfield County’s Repayment Contract with the U.S. Bureau of Reclamation (“Reclamation”).

The reach of the stream proposed for use of the Leased Water is the 15-Mile Reach of the Colorado River, described below and shown on the attached Location Map (Exhibit A).

Existing ISF Water Rights:

The CWCB currently holds water rights on the following reaches of the Colorado River within which CWCB can use the leased Ruedi Water for ISF purposes:

Case No.	Segment (Length)	Amount	Appropriation Date
92CW286	Tailrace of Grand Valley Pumping Plant to confluence of Gunnison River (15 miles)	581 cfs (7/1 to 9/30)	3/5/1992
94CW330	27.5 Road Gage to Confluence of Gunnison River (2 miles)	300 cfs (7/1 to 9/30)	11/4/1994



Natural Flow Regime and Existing Environment:

The Colorado River originates in the southern Rocky Mountains of Colorado and flows past Glenwood Springs and Grand Junction and downstream into Utah. The 15-Mile Reach includes the segment of river from the Grand Valley Diversion to the confluence of the Gunnison River within Grand Junction. Streamflow is primarily from snowmelt and local precipitation. The hydrograph is highly altered due to water diversions, but peak flows typically occur in May and June and drop off quickly by July in most years. Major tributaries include the Blue, Eagle and Roaring Fork Rivers.

The 15-Mile Reach provides critical habitat for four species of fish federally listed as threatened or endangered: the Colorado pikeminnow, razorback sucker, humpback chub, and bonytail. This reach is particularly sensitive to water depletions because of its location downstream of several large diversions. The reach provides spawning habitat for these fish as well as diverse high-quality habitat for adult fish, particularly for the Colorado pikeminnow and razorback sucker.

Due to development in the Colorado River basin, this reach has experienced declining flows and significant dewatering during the late summer months, and at times, there are shortages in the springtime. As a result, the USFWS has issued flow recommendations for the 15-Mile Reach since 1989 to protect instream habitat for these fish.

Proposed Method of Acquisition:

The executed Water Use Agreement between Garfield County and the CWCB from 2023 is attached as Exhibit B. Staff is currently working on a new water use agreement with Garfield County which is expected to be substantively similar to the one signed in 2023. Staff will provide the draft 2025-2026 water use agreement to the Board at its May meeting. No minimum amount of Leased Water is guaranteed under the Agreement, and it is at the discretion of Garfield County as to whether Leased Water would be made available in any given year.



Items that the Water Use Agreement addresses include:

- 1) the amount of water to be leased
- 2) the timing and rate of releases
- 3) payment procedures for the Leased Water
- 4) approval of Water Use Agreement by Reclamation
- 5) coordination on releases with outside entities such as Colorado Parks and Wildlife (“CPW”) and USFWS
- 6) other provisions deemed necessary by the parties.

Because the use of Leased Water under the proposed Agreement is authorized by the Ruedi Reservoir decrees and the Repayment Contract with Reclamation, no water court approval is necessary.

Use of the Leased Water:

The CWCB will use the Leased Water to supplement the existing ISF water rights in the 15-Mile Reach to preserve and improve the natural environment by providing additional flows to help meet, or reduce shortfalls to, USFWS flow recommendations benefitting the threatened and endangered fish habitat. Flow recommendations for the August - October time period in the 15-Mile Reach vary depending on hydrologic conditions but baseflow targets range between 810 cfs and 1,630 cfs. These targets are not consistently met, therefore, the CWCB’s use of the Leased Water to raise the decreed ISF rates to help meet the USFWS flow recommendations will help to improve the natural environment to a reasonable degree. The CWCB, USFWS and Reclamation will coordinate on the timing and amount of releases.

The released water will be available to pass through both the Ruedi Reservoir hydropower plant and the Orchard Mesa Irrigation District Vinelands hydropower plant on its way to the 15-Mile Reach, potentially providing additional local benefits. The Water Division 5 Engineer has confirmed that the release and delivery of the Ruedi Water to the 15-Mile Reach, pursuant to this Agreement is administrable.



Additional Factors for Board Evaluation:

- Because the releases are from water stored in priority, they do not require a change to the water right in water court. Therefore, the Board does not need to consider historical use or return flows.
- Although there are many other water rights located on the Colorado River, they will not be affected by releases of water previously stored in priority for delivery to the 15-Mile Reach.
- No injury to existing water rights is anticipated. Under this Agreement, water previously stored in priority under the Ruedi Reservoir water rights would be released during times of low flow in spring or summer and delivered to the 15-Mile Reach.
- When water is available for lease under this Agreement for ISF use in the 15-Mile Reach, it can be used to supplement the Board's decreed ISF water rights and may be combined, or "stacked", with the existing ISF water right to achieve a greater level of protection for the natural environment and help meet the USFWS flow targets for the listed species.
- Under the proposed Agreement, releases will not negatively affect any interstate compact.
- Under the proposed Agreement, releases will promote maximum utilization of waters of the State by being beneficially used in the 15-Mile Reach for ISF use, being available for hydropower use, and being available for use downstream of the 15-Mile Reach.

Cost to Complete Transactions:

In 2024, the cost of Leased Water from Garfield County was \$73.25 per acre-foot. Garfield County will set the annual lease prices. Staff will request Board approval for funding each year the lease is implemented.



Stakeholder Outreach:

Staff will provide information on lease implementation to local stakeholders at the annual Ruedi Reservoir operations meeting that is convened by Reclamation in August of each year. In previous years, stakeholders have expressed concerns that increased flow rates on the Fryingpan River due to releases may negatively affect recreational fishing. In the past, CWCB has coordinated with Reclamation, CPW and USFWS to ensure that releases from Ruedi Reservoir do not exceed 300 cfs and do not cause flows in the Fryingpan River to exceed 350 cfs so that recreational fishing opportunities are not limited. The proposed Agreement contains language ensuring these flow rates do not exceed the requested rates.

The Board's Water Acquisition Procedures:

ISF Rule 6. governs the Board's procedures for acquiring water for ISF use. Section 37-92-102(3), C.R.S. provides 120 days for the Board to determine what terms and conditions it will accept an acquisition agreement for water, water rights, or interests in water to preserve and improve the natural environment. ISF Rule 6. requires a minimum of two Board meetings to allow for public input prior to taking action on the proposed Water Use Agreement with Garfield County. The Board's initial consideration of these proposals at this March 2025 meeting initiates the 120-day period. Final action on the proposals could occur at the May 2025 Board meeting. ISF Rule 6m. (4) provides that any person may request the Board to hold a hearing on the proposed acquisitions, and that such request must be filed within twenty days of this March 2025 meeting.

As required by statute, CWCB staff have requested recommendations from CPW, the U.S. Department of Agriculture (Forest Service), and the U.S. Department of Interior (BLM). The recommendation letters will be provided for the second board meeting. Pursuant to ISF Rule 6m. (1), staff have provided notice of the proposed acquisition to all persons on the appropriate ISF and Substitute Water Supply Plan Notification Lists for Water Division 5.



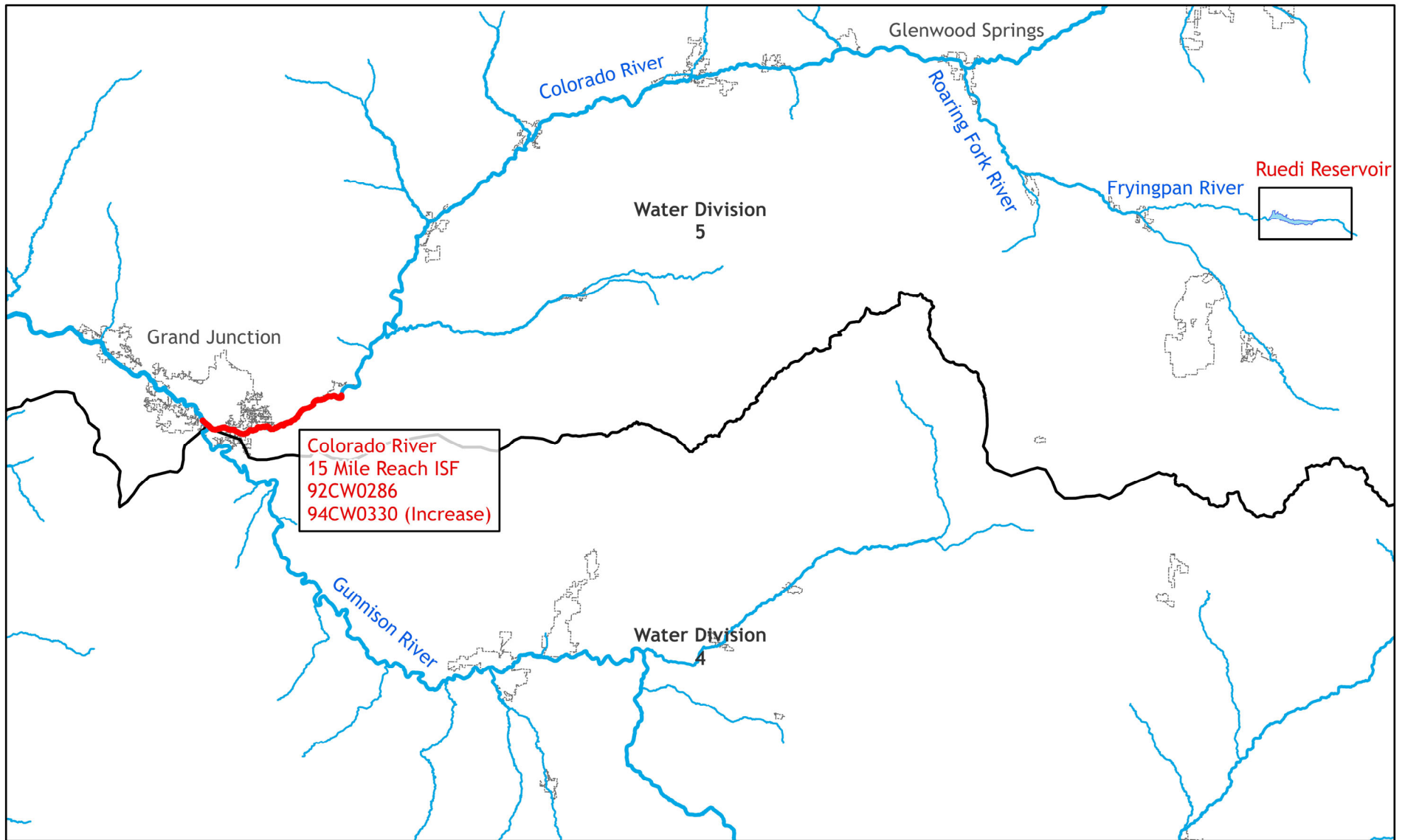
Attachments:

Exhibit A - Location Map

Exhibit B - Executed 2023 CWCB -Garfield County Agreement



Exhibit A



COLORADO
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March 19-20, 2025 CWCB Board Meeting
Agenda Item 6b. Proposed Water Use Agreement
with Garfield County to Lease Ruedi Reservoir
Water for Instream Flow Use on the 15-Mile Reach
Water Division 5 (1st meeting)

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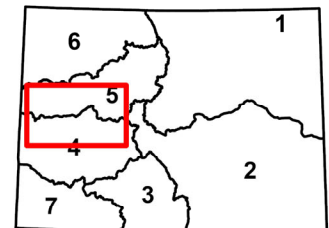


Exhibit B

WATER USE AGREEMENT

This Water Use Agreement ("Agreement") is entered into by and between the Board of County Commissioners, Garfield County, Colorado ("County"), and the Colorado Water Conservation Board, an agency of the State of Colorado ("CWCB"), Individually, "Party"; together, "Parties").

RECITALS

- A. The CWCB is an agency of the State of Colorado whose mission is to conserve, develop, protect, and manage Colorado's water for present and future generations;
- B. Pursuant to C.R.S. § 37-92-102(3) the CWCB may acquire water by contractual agreement for the purpose of preserving or improving the natural environment to a reasonable degree ("Instream Flow Use").
- C. The County has a perpetual contractual interest in 400 acre-feet of water stored in Ruedi Reservoir ("Ruedi Water") pursuant to the County's Repayment Contract with the United States of America Department of Interior Bureau of Reclamation ("Reclamation"), attached as Exhibit A.
- D. The CWCB holds appropriated instream flow water rights on the Colorado River decreed in Case Nos. 92CW286 and 94CW330 to preserve the natural environment to a reasonable degree within the 15-Mile Reach extending from the tailrace of the Grand Valley pumping plant to the confluence with the Gunnison River ("15-Mile Reach").
- E. The County may desire to lease Ruedi Water to the CWCB on an annual basis for use in the 15-Mile Reach to supplement CWCB's existing decreed instream flow water rights and to provide water to help meet the U.S. Fish and Wildlife Service's flow recommendations to support the habitat of threatened and endangered fish species ("Annual ISF Lease") subject to the terms of the following Agreement.

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CWCB and County agree as follows:

AGREEMENT

- 1. **Incorporation.** The Parties hereby incorporate by this reference the recitals set forth above.
- 2. **Term.**
 - 2.1 **Effective Date.** This Agreement shall become effective on the date in which the Agreement is signed by the CWCB and the County.
 - 2.2 **Expiration Date.** Unless otherwise terminated pursuant to the terms set forth herein, this Agreement shall automatically expire two (2) years after the Effective Date.
- 3. **Source and Use of Water**
 - 3.1 **Source.** The source of water to be used in an Annual ISF Lease shall be Ruedi Water stored and released from Ruedi Reservoir pursuant to County's Repayment Contract with Reclamation.
 - 3.2 **Use.** Ruedi Water shall be used for instream flow purposes to preserve and improve the natural environment to a reasonable degree within the 15-Mile Reach of the Colorado River.

- 3.3 Hydropower Use. Ruedi Water may be diverted from the Colorado River at the Grand Valley Project Diversion Dam (also known as the Roller Dam), transported in Grand Valley Project facilities to and run through the Grand Valley Power Plant, owned by Reclamation and operated by the Grand Valley Water Users Association ("GVWUA") and the Orchard Mesa Irrigation District ("OMID") to produce hydroelectric power, and discharged through the tailrace of the Grand Valley Power Plant to the Colorado River immediately below the Grand Valley Irrigation Company diversion dam. Ruedi Water that is run through the Grand Valley Power Plant shall not be checked back up the Colorado River using the Orchard Mesa Check structure, but shall flow through the Grand Valley Power Plant tailrace directly to the Colorado River near the upstream terminus of the 15-Mile Reach after it is used to produce hydroelectric power.
- 3.4 Rates of Flow for ISF Use. Releases of Ruedi Water may be used to preserve and improve the natural environment within the 15-Mile Reach up to the target flow rates set by the U.S. Fish and Wildlife Service as part of the Upper Colorado Endangered Fish Recovery Program. Releases made to the 15-Mile Reach shall not cause the overall release from Ruedi Reservoir to exceed 300 cfs or cause the flow rate in the Fryingpan River below Ruedi Reservoir to exceed 350 cfs.
- 3.5 Volume. The amount of Ruedi Water available for an Annual ISF Lease subject to this Agreement shall not exceed 350 acre-feet annually.
4. Operation of ISF Lease
- 4.1 Decision to implement ISF Lease. No later than May 1 of each year, CWCB and the County shall meet and determine whether Ruedi Water will be available and in what amount. It shall be within the County's sole discretion as to the determination of whether Ruedi Water will be available and in what amount. No minimum amount of Ruedi Water is guaranteed in a given year. The decision to implement an Annual ISF Lease in a given year shall be made mutually between CWCB and the County.
- 4.2 Delivery. The CWCB shall submit a delivery schedule to the County and Reclamation prior to the operation of an annual ISF lease. The County shall be responsible for arranging the delivery of Ruedi Water at the outlet works of Ruedi Reservoir into the Fryingpan River consistent with the CWCB delivery schedule, provided that the releases can be made within the operational limitations of Ruedi Reservoir as determined by Reclamation.
- 4.3 Operations and Coordination. The CWCB shall coordinate with Colorado Parks and Wildlife, Reclamation, and the U.S. Fish and Wildlife Service on the timing and rate of releases of Ruedi Water. CWCB will notify the County of the timing and amounts of water called for by the CWCB (In advance if possible) pursuant to this Agreement.
- 4.4 Exclusivity. The CWCB shall have the exclusive right to use Ruedi Water for instream flow use to preserve and improve the natural environment to a reasonable degree, provided that the Ruedi Water will be used consistent with the County's Repayment Contract and in accordance with the Fryingpan-Arkansas Act and Operating Principles. Once an Annual ISF lease is implemented subject to Section 6.3, below, the CWCB's exclusive right to use the Ruedi Water for Instream Flow Use shall be in effect through December 31 of that year.
- 4.5 Administration. The CWCB is responsible for taking whatever actions it deems necessary to protect the Ruedi Water that is released from Ruedi Reservoir from diversion by third parties between the outlet works of Ruedi Reservoir and the 15-Mile Reach, subject to the provisions of Section 3, above. The County shall have no obligation to protect the released water from diversion by third parties, nor shall it be responsible for the control, carriage,

use, handling, measurement or distribution of the Ruedi Water that is released from Ruedi Reservoir under this Agreement.

5. Approvals and Accounting

5.1 Reclamation Approval. An Annual ISF lease is subject to Reclamation's written approval. The CWCB and County shall coordinate on obtaining any necessary approvals of an Annual ISF Lease, including approval by Reclamation. No Ruedi Water shall be released from Ruedi Reservoir under this Agreement unless and until an Annual ISF Lease is approved by Reclamation.

5.2 Division Engineer Confirmation. The CWCB must obtain confirmation from the Water Division 5 Engineer that an Annual ISF Lease implemented under this Agreement is administrable.

5.3 Accounting. The Parties agree to communicate, coordinate and cooperate, if needed, on any required accounting as set forth by the Colorado Division of Water Resources or Reclamation.

6. Price and Payment Procedure

6.1 The County shall set the price per acre-foot of Ruedi Water annually. The total cost of an Annual ISF Lease shall be the amount of Ruedi Water to be leased, in acre-feet, multiplied by the price per acre-foot ("Lease Amount"). To implement an ISF Lease, CWCB must determine that adequate funding is appropriated and available.

6.2 If the County and CWCB mutually desire to implement an Annual ISF Lease in a given year, and the CWCB has approved funding for the Annual ISF Lease at a regularly scheduled Board meeting, and the County has approved the lease amount at a regularly scheduled Board meeting, the CWCB will issue a Purchase Order for the Lease Amount.

6.3 Once a Purchase Order is issued, the County will invoice the CWCB for the Lease Amount. Within thirty (30) days, the CWCB shall remit payment for the full amount invoiced by the County. An Annual ISF Lease is implemented once CWCB issues a Purchase Order and is invoiced by the County for the Lease Amount.

7. Termination

7.1 This Agreement may be terminated upon mutual agreement of the Parties or as described herein.

7.2 Material Breach. Either Party may terminate this Agreement for a material breach of the terms of this Agreement by the other Party; provided that the terminating Party has first given at least sixty (60) days prior written notice specifying in detail such alleged material breach and giving the other Party the right within such sixty (60) day period to cure and remedy such alleged material breach. Breach of any annual lease under this Agreement is not a breach of this Agreement.

7.3 Ability to Perform Impaired. Either Party may terminate this Agreement if its legal ability to deliver Ruedi Water is materially impaired or is eliminated because of the termination or adverse modification of the Repayment Contract, permits, decrees, or other authorizations or legal or administrative findings that are necessary to deliver Ruedi Water; provided that the terminating Party has first given at least sixty (60) days prior written notice to the other Party specifying the issue and steps taken to resolve the issue.

7.4 Notice of Breach. Prior to commencing any action for enforcement of this Agreement, the Party seeking enforcement shall give the other Party no less than sixty (60) days prior

written notice specifying in detail the basis for the enforcement action and the desired outcome that would resolve the perceived need for enforcement.

8. **Remedies.**

8.1 **Available Remedies.** Remedies under this Agreement are limited to remedies available under Colorado law.

8.2 **Costs and Fees.** In the event of a dispute under this Agreement, each Party shall bear its own costs and fees, including attorney's fees.

9. **Force Majeure.** In the event either Party is unable to perform its obligations under the terms of this Agreement because of acts of God; natural disasters; epidemics; actions or omissions by governmental authorities; unavailability of supplies or equipment critical to perform; major equipment or facility breakdown; changes in Colorado or federal law, including, without limitation, changes in any permit; or other causes reasonably beyond that Party's control, such Party shall not be liable to the other Party for any damages resulting from such failure to perform or otherwise from such causes.

10. **Notices.** Any notice required or permitted to be given by a Party under or in connection with this Agreement shall be in writing and shall be deemed duly given when personally delivered or sent by: (a) registered or certified mail, return receipt requested, postage prepaid, (b) expedited courier service, or (c) email with confirmation of receipt, to the following:

If to CWCB: Colorado Water Conservation Board
Attention: Chief, Stream and Lake Protection Section
1313 Sherman Street, Room 718
Denver, CO 80203
Email: dnr_cwcbisf@state.co.us

With a copy to: CWCB ISF Program
Attention: Pete Conovitz
1313 Sherman St., Rm.718
Denver, CO 80203
Email: pete.conovitz@state.co.us

If to County: Garfield County
Attention: Fred Jarman, County Manager
108 8th Street, Suite 101
Glenwood Springs, CO, 81601
Email: fjarman@garfield-county.com,

11. **Miscellaneous.**

11.1 No Agency. Nothing in this Agreement will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the Parties. Notwithstanding the foregoing, the CWCB or County may elect to designate an agent to undertake specific responsibilities under this Agreement. Should the CWCB or County elect

to do so, it shall provide written notice to the other party of such designation including the identity of such agent; contact information for such agent, including a principle point of contact; and clearly defined description(s) of the responsibilities such agent shall undertake on behalf of the CWCB or County.

- 11.2 Heirs and Assigns. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and permitted assigns of the Parties.
- 11.3 Choice of Law. This Agreement shall be construed in accordance with the laws of the State of Colorado, as amended, without reference to conflicts of laws.
- 11.4 No Waiver of Immunities. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.
- 11.5 No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default or breach hereunder be deemed a waiver of any subsequent default or breach hereunder.
- 11.6 Assignment. This Agreement may be assigned by either Party upon the prior written consent of the other Party.
- 11.7 Amendment. No amendment, modification, or novation of this Agreement or its provisions and implementation shall be effective unless subsequently documented in writing that is approved and executed by both Parties with the same formality as they have approved and executed the original Agreement.
- 11.8 Severability. If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and the remainder of this Agreement shall remain operative and binding on the Parties.
- 11.9 Merger. This Agreement constitutes the entire Agreement between the Parties and sets forth the rights, duties, and obligations of each to the other as of the Effective Date. Any prior Agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.
- 11.10 No Third-Party Beneficiaries. This Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the Parties.
- 11.11 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
- 11.12 Non-Discrimination. The Parties will fulfill their obligations under this Agreement without discriminating, harassing, or retaliating on the basis of race, color, national origin, ancestry, sex, age, pregnancy status, religion, creed, disability sexual orientation, genetic information, spousal or civil union status, veteran status, or any other status projected by applicable law.
- 11.13 Authority. Each Party represents that it has obtained all necessary approvals, consents, and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding Agreement, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law, or

any other governing authority of that Party.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, CWCB and District execute this Agreement on the dates set forth below.

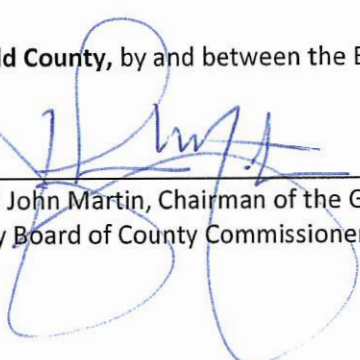
COLORADO WATER CONSERVATION BOARD, an agency of the State of Colorado:



Name: Rebecca Mitchell, Director

Date: 5-19-2023

Garfield County, by and between the Board of County Commissioners, Garfield County, Colorado



Name: John Martin, Chairman of the Garfield
County Board of County Commissioners

Date: May 1 2023

LIST OF EXHIBITS

Exhibit A. Repayment Contract

CONTRACT

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

RUEDI RESERVOIR
FRYINGPAN-ARKANSAS PROJECT, COLORADO
Ruedi Reservoir Round II Water Sales

REPAYMENT CONTRACT BETWEEN THE UNITED STATES AND
GARFIELD COUNTY

THIS CONTRACT, Made this Sept 2019 day of Sept 2019 pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto, particularly Section 9(c)(1) of the Reclamation Project Act of 1939 (53 Stat. 1187), Title 111 of the Act of July 3, 1958 (72 Stat. 320), and the Act of August 16, 1962 (76 Stat. 389), as amended, collectively referred to as the Federal Reclamation Laws, is between the UNITED STATES OF AMERICA, hereinafter referred to as the "United States," represented by the Contracting Officer executing this Contract, and GARFIELD COUNTY, hereinafter referred to as the "Contractor." The United States and the Contractor are sometimes referred to individually as the "Party" and collectively as the "Parties".

WITNESS ETH THAT

EXPLANATORY RECITALS:

- a. WHEREAS, the United States has constructed Ruedi Reservoir and related facilities as a feature of the Fryingpan-Arkansas Project as authorized by the Act of August 16, 1962 (76 Stat. 389), as amended by the Act of October 27, 1974 (88 Stat. 1486), the Act of November 3, 1978 (92 Stat. 2493) and the Act of March 30, 2009 (123 Stat. 1321), in substantial conformance with House Document No. 1 87, 83rd Congress, 1st Session, as modified by House Document No. 353, 86th Congress, 2nd Session, subject to the Operating Principles for the Fryingpan-Arkansas Project as set forth in House Document No. 130, 87th Congress, 1st Session.
- b. WHEREAS, Ruedi Reservoir was authorized to provide storage capacity for replacement water for senior downstream diversion rights in western Colorado at times of Fryingpan-Arkansas Project diversions to the Arkansas River Basin in eastern Colorado, and to furnish regulatory storage capacity and water to users in western Colorado for any purpose recognized by the laws of the United States.

c. WHEREAS, paragraph 6(b) of House Document 130 (87th Congress, 1st Session, adopted March 15, 1961) provides that "the sale of water for use outside the natural basin of the Colorado River can only be made with the consent of the Colorado River Water Conservation District."

d. WHEREAS, on August 1959, in Civil Action No. 4613 (Garfield County District Court, State of Colorado), the Court awarded the water storage right for Ruedi Reservoir and decreed that "the sale of water for use outside the natural basin of the Colorado River can only be made with the consent of the Colorado River Water Conservation District. "

e. WHEREAS, the capital costs for the construction of Ruedi Reservoir are allocated among the authorized purposes, including \$9,312,000 allocated to the regulatory purpose consisting of the initial construction cost plus interest during construction. Pursuant to Section 2 of the Act of August 16, 1962, as amended, this amount is reimbursable with interest in not more than 50 years from September 30, 1969, when Ruedi Reservoir was placed in service. Under the provisions of the Water Supply Act of 1958 (72 Stat. 297), interest charges on the \$9,312,000 did not accrue for the 10 year period ending September 30, 1979. The \$9,312,000 of costs allocated to the regulatory purpose are further allocated to Ruedi Reservoir Round I and Ruedi Reservoir Round II water sales and are \$1,194,402 and \$7,892,598 respectively. As of September 30, 2012, the uncontracted capital costs, including accrued interest, operation, maintenance, and replacement costs for Ruedi Reservoir allocated to Ruedi Reservoir Round II water sales, hereinafter referred to as Round II were \$34,271,993.

f. WHEREAS: the Contractor desires to enter into a contract, pursuant to the Federal Reclamation Laws and the laws of the State of Colorado, for a quantity of water from the regulatory capacity of Ruedi Reservoir and to repay the reimbursable costs associated therewith as more specifically provided herein.

g. WHEREAS, the United States desires to provide the quantity of water requested by the Contractor pursuant to the terms and conditions set forth herein.

h. WHEREAS, on September 13, 2013, the Parties entered into Contract Number 139D6C0105.

i. WHEREAS, the Contractor requested to add a new additional place of use, being the 15-Mile Reach of the Colorado River.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

DEFINITIONS

1. Where used herein, unless specifically expressed otherwise or obviously inconsistent with the intent hereof, the term:

- a. "United States" shall mean the United States of America, acting through the Secretary of the Interior hereinafter the "Secretary" or a duly authorized representative.
- b. "Contracting Officer" shall mean the Secretary of the Interior or a duly authorized representative.
- c. "Project" shall mean the Fryingpan-Arkansas Project, Colorado.
- d. "Year" shall mean the period beginning January 1 and ending on the following December 31.
- e. "Ruedi Reservoir" shall mean the dam, reservoir, and related facilities as presently constructed on the Fryingpan River above the Town of Basalt, Colorado, as a feature of the Fryingpan-Arkansas Project.
- f. "Replacement capacity" shall mean that portion of the total capacity of Ruedi Reservoir required to permit Project diversions at times when such diversions could not otherwise have been made because of simultaneous demands of senior diversions in western Colorado that existed on April 30, 1959, and as further defined in Section 6(a) of the Operating Principles, Fryingpan-Arkansas Project.
- g. "Regulatory capacity" shall mean that portion of the total capacity of Ruedi Reservoir not needed for replacement purposes as further defined in Section 6(b) of the Operating Principles, Fryingpan-Arkansas Project.
- h. "Municipal and industrial uses" shall mean use of water by municipalities, industrial users, commercial recreation entities, piscatorial users including delivery of water to supplement streamflow, and other water user entities not engaged in commercial agricultural production.
- i. "Commercial agricultural uses" shall mean water used primarily for the commercial production of crops and livestock, which are the principle sources of income for the user of such water.
- j. "Capital costs" shall mean the capitalized investment for Ruedi Reservoir including construction costs, interest during construction, accrued interest, and accrued unpaid annual operation, maintenance, and replacement costs, and interest thereon, and other appropriate costs allocable to the Regulatory capacity.
- k. "[Operation, maintenance, and replacement (OM&R) costs" shall mean those costs incurred to operate and maintain Ruedi Reservoir, including any administrative, overhead, or general expenses incurred by the United States, either directly or indirectly, in the operation and maintenance of Ruedi Reservoir and in the administration of this Contract and those costs incurred to remedy conditions brought about by the ordinary use of Ruedi Reservoir or to restore or replace components of the existing reservoir. For the purposes of this Contract, replacement costs shall be those costs allocable to the Regulatory capacity, but

shall not include costs to increase the capacity of Ruedi Reservoir or to expand the purposes for which it was originally authorized and constructed,

l. "Marketable yield" shall mean the 46,500 acre-feet of water estimated to be available from the Regulatory capacity of Ruedi Reservoir, including the 7,850 acre-feet previously sold under Round I, and the remaining 38,650 acre-feet designated for the Round II water sales.

m. "15-Mile Reach" shall mean the Colorado River segment that extends from the confluence of the Gumison River upstream 15 miles to the Grand Valley Irrigation Company Diversion Dam near Palisade, Colorado.

TERM OF THE CONTRACT

2. a. This Contract shall become effective on the date of execution and shall remain in effect unless terminated in accordance with the provisions of Article 9 hereof.

b. Contract No. 139D6C0105 is terminated effective on the date of execution of Contract No. 199D650074

CONTRACTED WATER SUPPLY

3. a. The Contractor hereby contracts for 400 acre-feet of water annually from the Marketable yield of Ruedi Reservoir for Municipal and industrial use subject to the terms and conditions of this Contract.

b. The United States shall not enter into any contract that will result in the total amount of water marketed from the reservoir exceeding the Marketable yield, Provided That the United States reserves the right to make short-term (5 years or less) sales or leases of water from the Regulatory capacity of Ruedi Reservoir for purposes recognized under the laws of the United States and the State of Colorado, as long as such sales or leases do not impinge upon the Contractor's entitlement to take delivery of water contracted for herein or adversely affect the determination of the Marketable yield.

c. The Contractor shall have no right to carryover storage of undelivered water from Year to Year under this Contract.

CONTRACTOR'S REPAYMENT OBLIGATION AND OTHER COSTS

4. a. For the water supply contracted for herein, the Contractor repaid a proportionate share of the Capital costs allocable to Round II. As of September 30, 2012, the unpaid uncontracted Capital costs allocable to Round II was \$34,271,993. The Contractor's Capital cost repayment obligation of \$515,960.00 represent the Contractor's proportionate (400/[38,650 less previously marketed Round II water]) share of the unpaid Capital costs allocable to Round II. In 2012* the Parties executed a financial agreement which established

the cost of the water at \$1,289.90 per acre-foot. In 2012, the Contractor paid \$71.90 per acre-foot toward repayment of the obligation, leaving a remaining outstanding balance of \$1,218.00 per acre-foot. The financial agreement also established that the per acre-foot costs would be indexed annually at 1.79% until this Contract was executed. Therefore, the \$1,218.00 per acre-foot was then indexed to 2013 dollars by an annual increase of 1.79% [$(\$1,218.00 \times 1.79\%) + \$1,218.00$], which established the Contractor's outstanding obligation of \$1,239.80 per acre-foot for a total remaining outstanding obligation of \$495,920.00.

b. The Contractor's outstanding Capital cost repayment obligation of \$495,920.00 was paid in full upon execution of Contract No. 139D6C0105.

c. If, subsequent to the execution of this Contract, additional Capital costs are incurred for the Regulatory capacity of Ruedi Reservoir, the Contractor shall pay a proportionate share of such additional costs allocable to Round II, as determined by the Contracting Officer, which share shall be in direct proportion to the contracted water supply specified in Article 3.a. above. Payment of such additional costs shall be upon such terms and conditions as determined by the Parties hereto, based on Reclamation policies and laws in effect at the time. Prior to incurring such costs, the Contracting Officer shall notify the Contractor in writing of any necessary additional Capital costs, including the basis for such costs and the Contractor's estimated proportionate share thereof.

d. The Contractors Capital cost obligation is a fixed obligation of the Contractor and is payable as provided for herein whether or not the quantity of water contracted for in Article 3.a. above is available for delivery to the Contractor.

e. In addition to the Capital cost repayment obligation, the Contractor shall also pay a proportionate share of the actual annual reimbursable OM&R costs allocable to the Marketable yield. The Contractor's share of the actual annual reimbursable OM&R costs shall be in direct proportion to the contracted water supply specified in Article 3 ea. above to the 46,500 acre-foot Marketable yield.

f. The annual OM&R charges shall be based on the Federal fiscal year (October 1 through the following September 30) accounting. Payment for the current fiscal year, as adjusted for actual OM&R charges for the previous fiscal year, shall become due and payable on or before January I of each Year.

g. The annual OM&R charge will be due and payable upon execution of this Contract and thereafter shall be due and payable on or before January I of each subsequent Year of the term of this Contract. The annual OM&R charge will be based on estimates prepared by the Contracting Officer. In the event the estimated OM&R costs fall short of the actual OM&R costs, or whenever it is determined by the Contracting Officer that a deficit will occur after January I of the fiscal year, supplemental notices may be issued by the Contracting Officer requesting additional funds to cover such shortfall or deficiency. Funds not expended during the fiscal year will be carried over and applied as a credit against the Contractor's charges for the following fiscal year.

h. No water will be delivered at any time the Contractor is in default of any payment required pursuant to this Contract. The Contractor shall make all payments required pursuant to this Contract whether or not the quantity of water specified in Article 3 pa. above is available for delivery and whether or not the Contractor is capable of using the water delivered or scheduled for delivery.

i. Payments shall be made to a certain bank by a medium specified by the Contracting Officer, by check to a certain lock box, or by wire transfer to the United States Treasury, or to such other locations and by such other methods as the Contracting Officer may specify and as are readily available to the Contractor for its use.

j. For the first year of Contract No. 199D650074, any remaining water supply and associated charges and payments associated with Contract No. 139D6C0105 shall be credited to Contract No. 199D650074.

DELIVERY OF WATER

5. a. Before June 1 of each Year, the Contractor shall submit to the Contracting Officer a written schedule of its anticipated monthly demand for the delivery of water for the following 12 months. The Contractor shall revise said schedule as necessary to reflect its expected demand schedule based on current hydrologic conditions. Notwithstanding the above, the Contractor shall be entitled to take delivery of water under this Contract at any time upon 24 hours notice to the Contracting Officer or a designated representative. All notices requesting delivery of water or a change in the delivery schedule shall be in writing. Orders which cannot be transmitted in writing due to urgency or emergency situations may be telephoned to the Contracting Officer's designated representative, Provided, That such orders shall be confirmed in writing by the Contractor.

b. The Contracting Officer will notify the Contractor and the Division No. 5 Engineer, Colorado Division of Water Resources, of the date, time, and amount of all water released from Ruedi Reservoir and delivered pursuant to this Contract.

c. The delivery of water pursuant to this Contract will be made into the Fryingpan River at the outlet works of Ruedi Reservoir. All delivery of water shall be limited by the outlet capacity of Ruedi Reservoir. All water delivered to the Contractor from Ruedi Reservoir will be measured at the outlet works of Ruedi Reservoir by the Contracting Officer with equipment owned, operated, and maintained by the United States. The United States will not be responsible for control, carriage, use, handling, or distribution of water delivered to the Contractor beyond the delivery point, and the Contractor shall hold the United States harmless from and against all claims, demands, and causes of action on account of property damage, personal injury, or death resulting from the control, carriage, use, handling, or distribution of water delivered to the Contractor.

d. The Contractor will not be responsible for the storage of water in or OM&R of Ruedi Reservoir and the United States shall protect, indemnify, and hold the Contractor harmless from and against all claims, demands, and causes of action of any nature whatsoever resulting from or in any manner connected with the storage of water in or the OM&R of Ruedi Reservoir within the limits of the Federal Tort Claims Act (28 U.S.C. 2671-2680)

e. The United States reserves the right to release the water contracted for herein from an alternate reservoir or reservoirs, Provided, That such releases from an alternate reservoir or reservoirs shall neither diminish the water supply contracted for herein nor affect the Contractor's ability to use the water for the purposes, at the location and at the time(s) as contemplated herein.

CONTRACTORS USE OF WATER

6. a. Water delivered to the Contractor under this Contract will be used for Municipal and industrial uses by augmentation and exchange to replace out of priority water depletions to senior water rights in the Colorado River Basin. Place of use will occur within the Contractor's service area and the 15-Mile Reach of the Colorado River. The Contractor's service area is defined as the main stem of the Colorado River and its tributaries (excluding the White River and Yampa River Basins), located in Garfield County* within the State of Colorado. (See map, attached as Exhibit C, which is hereby made a part of this Contract by this reference.) Water may also be used to augment flows for Green Mountain Reservoir operations. Green Mountain Reservoir is located in Summit County, Colorado.

b. Lease, sale, donation, or other such disposal of any of the water contracted for herein shall require prior written approval of the Contracting Officer; Provided, That a municipal contractor may distribute the water contracted for herein to its customers and charge its customers such rates as permitted under Colorado law.

WATER SHORTAGE AND APPORTIONMENT

7. a. The Contracting Officer shall operate the Project in accordance with the Operating Principles for the Fryingpan-Arkansas Project as set forth in House Document No, 130, 87th Congress, 1st Session.

b. Water delivered pursuant to this Contract is provided from the Regulatory capacity of Ruedi Reservoir. Should shortages occur to the Regulatory capacity, as determined by the Contracting Officer, based on schedules furnished pursuant to Article 5.a. above, such shortages will be apportioned among the Ruedi Reservoir contractors in the following manner: first, deliveries to all temporary and

short-term contractors will be proportionately reduced up to 100 percent of their respective contracted amounts; second, deliveries to all Round II contractors will be proportionately reduced up to 100 percent of their respective contracted amounts; third, deliveries to all Round I municipal contractors will be proportionately reduced up to 30 percent of their respective contracted amounts; and finally, deliveries to all Round I contractors will be reduced up to 100 percent of their respective contracted amounts based on contract execution dates with the earliest date having highest priority; Provided, That the deliveries to all contracts with the same execution dates shall be proportionately reduced up to 100 percent of their respective remaining contracted amounts.

c. In administering shortage conditions, the Contracting Officer may require the Contractor to submit revised schedules pursuant to Article 5.a. above. The Contracting Officer reserves the right to limit the amount of water available for delivery under this Contract to the amount specified in such revised schedules. Should any revised schedule require less than the total amount of water under contract by an individual contractor to meet the Contractor's expected demands, the Contracting Officer reserves the right to use all or any portion of the water not so scheduled by the Contractor for redistribution to other contractors to mitigate the effects of the shortage. In no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damage, either direct or indirect, arising out of such shortage.

d. No adjustment will be made in the payments required pursuant to this Contract as a result of the Contracting Officer's inability to deliver water requested for delivery by the Contractor due to shortage conditions.

e. September 13, 2013, the date that Contract Number 139D6C0105 was executed, shall be the date associated with the Water Shortage and Apportionment provisions of this Contract No. 199D650074.

TERMINATION OF WATER DELIVERIES

8. Delivery of the water contracted for herein shall cease at the option of the United States upon failure of the Contractor to make payments as required by this Contract or upon failure of the Contractor to abide by any lawful notice, order, or final administrative or judicial determination that the Contractor has violated a rule or regulation of the United States or the State of Colorado directly relating to and affecting the furnishing of water hereunder; Provided, That water deliveries hereunder shall not cease unless such failure or violation continues 60 days after the United States gives the Contractor written notice to remedy the failure or violation.

TERMINATION OF THE CONTRACT

9. a. This Contract may be terminated and the delivery of water contracted for herein shall cease at the option of the United States upon failure of the Contractor to make payments as required by this Contract or upon failure of the Contractor to abide by any lawful notice, order, or final administrative or judicial determination that the Contractor has violated a rule or regulation of the United States or the State of Colorado directly relating to and affecting the furnishing of water hereunder; Except, That this Contract may not be terminated unless such failure or violation continues 60 days after the United States gives the Contractor written notice of such failure or violation.

b. The Contractor may terminate this Contract at the end of any Year by providing written notice of such termination to the United States pursuant to Article 11 below not less than 90 days prior to the effective date of termination, Provided, That such termination must be necessitated by the Contractor's inability to meet the payments required hereunder due to the applicability of the Colorado Taxpayer's Bill of Rights Act (TABOR). Upon any such termination, the United States may make the water supply contracted for herein available to other contractors, or reallocate the contracted water supply to other purposes, and the Contractor has no prior claim or right to enter into a contract for such water supply or any portion thereof in the future.

ENVIRONMENTAL COMPLIANCE

10. a. Compliance with the provisions of the National Environmental Policy Act (NEPA), as amended, and the Endangered Species Act (ESA), as amended, are a prerequisite to execution of this Contract. The general environmental impacts associated with the Ruedi Reservoir Round II water marketing program under the preferred alternative with conservation measures are described in the Final Supplemental Environmental Statement (FSES) dated August 1, 1989. Site specific compliance in the form of Environmental Assessment No. EC-1300-13-003 and Categorical Exclusion No. ECAO 2019-100 was completed for this Contract. NEPA compliance for this Contract has resulted in a requirement to implement certain measures to avoid, minimize, or mitigate the environmental impacts associated the Contractor's use of the water pursuant to this Contract. These requirements are described in Exhibit B, attached hereto and by this reference made a part of this Contract, and the Contractor agrees to abide by and comply with the terms and conditions stated herein. In the event of changed circumstances additional compliance may also be required on a site-specific basis and shall be the responsibility of the United States using data and information and a site-

specific mitigation plan, if required, provided to the Contracting Officer for approval. The data, information, and mitigation cover those environmental impacts associated with the

Contractor's diversions and on-site use of Ruedi Reservoir water. All costs associated with the preparation, approval, and implementation of NEPA and ESA compliance and mitigation plans, including costs incurred by the United States, shall be the responsibility of the Contractor.

b. The Contractor shall give notice to the United States concerning any changes in location of diversions, return flows, places or type of use, or diversion rates. The Contractor shall be responsible for any additional NEPA and ESA compliance or mitigation measures which may be required by the United States as the result of such changes and all associated costs, including costs incurred by the United States, shall be the responsibility of the Contractor.

c. The Contractor shall make advance payment for costs to be incurred by the United States, which are the Contractor's responsibility under this Article 10,

NOTICES

11. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed postage prepaid, or delivered to the Regional Director, Great Plains Region, Bureau of Reclamation, P.O. Box 36900, Billings, Montana 59107-6900, and on behalf of the United States, when mailed postage prepaid or delivered to the Contractor, Garfield County, Attention: Garfield County Manager, 108 8th Street, Suite 213, Glenwood Springs, CO 81601. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

ASSIGNMENT OF CONTRACT

12.a. No assignment or transfer of this Contract or any rights or interests herein shall be valid until approved in writing by the Contracting Officer.

b. The United States reserves the right to enter into agreements with third party agents for the administration of this Contract, Provided, That such agreements shall not adversely affect the rights of the Contractor to receive the water contracted for under this Contract*

STANDARD CONTRACT ARTICLES

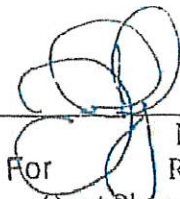
13. The standard contract articles applicable to this Contract are listed below. The full text of these standard articles is attached as Exhibit A and is hereby made a part of this Contract by this reference.

A. Charges for Delinquent Payments

- B. General Obligation--Benefits Conditioned Upon Payment
- C. Contingent on Appropriation or Allotment of Funds
- D. Officials Not to Benefit
- E. Books, Records, and Reports
- F. Rules, Regulations, and Determinations
- G. Quality of Water
- H. Water and Air Pollution Control
- L Equal Opportunity
- . J. Compliance with Civil Rights Laws and Regulations
- K. Uncontrollable Forces
- L. Medium for Transferring Payments

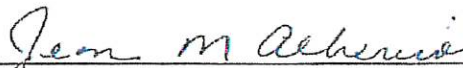
IN WITNESS WHEREOF, the Patties hereto have executed this Contract as of the day and Year first above written,


THE UNITED STATES OF AMERICA

By 
For Michael S. Black
Regional Director
Great Plains Regional Office
Bureau of Reclamation

GARFIELD COUNTY
By 
John Martin
Chair/ Board of County Commissioners

ATTEST:


By: Jean M. Alberici


Clerk to the Board
Title

